

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LESLIE I. BARNETT)	
Claimant)	
VS.)	
)	
UNITED PARCEL SERVICE)	
Respondent)	Docket Nos. 253,398;
)	253,399
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Robert H. Foerschler's Award dated February 11, 2002. The Appeals Board (Board) heard oral argument on August 21, 2002.

APPEARANCES

Michael W. Downing of Kansas City, Missouri, appeared for claimant. Stephanie Warmund of Overland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award. The record also includes the Stipulation dated December 12, 2001.

ISSUES

This case involves two docketed claims that were consolidated for trial and award purposes. Docket Number 253,398 is a claim for bilateral upper extremity injuries with an accident date of August 5, 1999. Docket Number 253,399 is a claim for a February 14, 2000 injury to claimant's right knee. Judge Foerschler:

. . . decided that claimant should be awarded for 20 percent permanent partial impairment of the left upper forearm for the injury of August 5, 1999, and another for ten percent permanent partial impairment of the right lower extremity for the knee injury of February 14, 2000. There does not appear to be enough evidence to make an award for the right upper extremity, which cannot be said to have been sustained more or less simultaneously with the left injury.¹

With regard to average weekly wage, Judge Foerschler noted "While some wage information was discussed at the regular hearing (Trpt., pp 4 & 5), no evidence was ever placed in the file. However, in the submission letter of claimant an informal stipulation was mentioned in the benefit of \$159.66 was proposed for the August 5, 1999, injury, and \$188.84 for the February 14, 2000, injury, and since these were not contradicted later in the respondent's submission, they will be used."²

Actually, both these figures were for the August 5, 1999 injury. The higher number represented the compensation rate after the value of fringe benefits was included. The compensation rates for the February 14, 2000 injury were \$163.76 without fringe benefits and \$192.94 with fringe benefits included.

On appeal, claimant seeks the Board's review of the ALJ's findings concerning the nature and extent of claimant's disability and the average weekly wage. Specifically, claimant argues that she is entitled to a whole body disability in Docket Number 253,398 because she suffered permanent impairment to both upper extremities, either simultaneously or as a direct consequence of over use and over compensation on the right due to the injured left upper extremity. Claimant also contends her percentage of impairment should be increased. In both cases claimant is seeking an award based on her percentage of functional impairment. There is no claim for work disability. As to the wage, claimant contends that the value of fringe benefits in the weekly amount of \$43.75 should be included as of the date they were terminated. Claimant alleges respondent stopped providing the fringe benefits immediately after her last working day. Respondent agrees

¹ Award at 5.

² Award at 5.

with the \$43.75 being the value of the fringe benefits it provided, but contends there is no evidence in the record as to when respondent terminated those benefits.³

Respondent contends the compensation rate for Docket Number 253,398 should be \$151.66, but otherwise requests that the ALJ's Award be affirmed in all respects.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds Administrative Law Judge Robert H. Foerschler's February 11, 2002 Award should be affirmed as to the percentages of permanent partial disability in both docketed claims, but 200 weeks should be used for the disability award calculation in Docket Number 253,399 and the average weekly wage and compensation rates should be modified to include the respondent's cost of the fringe benefits after February 14, 2000, the last date claimant worked for the respondent.

Claimant started working for UPS in June 1998. On August 5, 1999, claimant was loading packages onto a shelf when a package fell onto her left hand bending back her left thumb and causing the wrist to "pop." She had an immediate onset of pain. Although she reported her injury, she was not immediately referred for medical treatment. Eventually, claimant did obtain treatment with Dr. John Chenoweth at Altrutech. She was taken off work. On September 3, 1999, Dr. Chenoweth wrote UPS that his plan was to order daily physical therapy, a thumb spica splint for claimant's left thumb and place her on modified duty with no use of the left upper extremity at work. Claimant was referred to a hand specialist, Dr. Quinn on October 7, 1999, who continued her on the same modified duties. Claimant also continued receiving physical therapy and medication. She continued treating with Dr. Quinn until December 9, 1999, when she was released to return to full duty work. Although she worked with a wrist splint, claimant had no other restrictions and continued working full duty until February 14, 2000, when she suffered an injury to her right knee. UPS again sent her to Altrutech for treatment and she was again taken off work. February 14, 2000 was the last date claimant worked for UPS.

Claimant's left hand symptoms persisted and on April 18, 2000 claimant underwent left hand and wrist surgery by Dr. Quinn. According to Dr. Quinn, his records show claimant first complained about her right wrist in June 2000.

Claimant was referred to Dr. Lowry Jones for her knee injury. She underwent knee surgery on May 19, 2000. Claimant was released by Dr. Jones with permanent restrictions from her knee injury on August 31, 2000. She was released by Dr. Quinn for her upper extremity injuries on November 20, 2000. Thereafter, claimant did not return to work for

³ See K.A.R. 51-3-8(c).

respondent because respondent was unable or unwilling to accommodate her restrictions.

Claimant testified that she received little, if any, benefit from the wrist and knee surgeries. She continues to have pain, numbness and weakness in both hands. Claimant attributes her right hand symptoms to overuse from protecting her injured left hand and also from the use of crutches after her knee injury. Claimant discussed surgery for her right hand with Dr. Quinn, but decided against proceeding, in part, because of the lack of benefit from the surgery on the left and also because she was concerned that it might worsen her condition. Claimant also describes occasional pain into her upper arms and into her shoulders and describes the symptoms in both upper extremities to be about the same, neither is worse than the other. She also has continuing problems with her knee including swelling and pain with prolonged walking or standing. If she squats it is difficult to get back up and her knee will sometimes lock up. These symptoms not only interfere with her ability to work, but also with her activities of daily living. She is unable to play sports and has trouble fixing cars because she cannot grip or lift heavy objects nor can she squat or kneel. Housework such as vacuuming causes pain in her wrist. Claimant occasionally wears a wrist brace, including whenever she drives. Claimant denied any difficulties with her wrists prior to her employment with respondent.

John Michael Quinn, M.D., is a board certified plastic surgeon. He began treating claimant on October 7, 1999, as a referral from Dr. Chenoweth. Claimant described a work-related hyper extension injury to her left thumb and wrist. At that time her complaints were limited to the left hand, wrist and thumb. His findings upon examination were consistent with tendonitis and carpal tunnel syndrome in the wrist and De Quervain's syndrome in the left thumb. He initially treated claimant with steroid injections and prescribed anti-inflammatories. Dr. Quinn also prescribed occupational therapy. Although he initially restricted claimant to no use of the left arm, he subsequently modified the restrictions to lifting only 10 to 15 pounds. When he released claimant to return to work his only restriction was that she work with a splint.

When claimant returned to Dr. Quinn on March 2, 2000, her symptoms had worsened. Dr. Quinn ordered wrist x-rays and an EMG to test for carpal tunnel syndrome. Both tests were normal. Dr. Quinn diagnosed three problems, an EMG negative carpal tunnel syndrome, De Quervain's syndrome and volar synovitis. He recommended surgery and performed a left endoscopic carpal tunnel release, left De Quervain's release and injected the left wrist flexor tendons with a steroid solution. Dr. Quinn continued to follow claimant. At first her symptoms improved post-operatively but, on June 1, 2000, claimant had complaints about her right wrist. Her symptoms were consistent with the symptoms on her left wrist and consistent with tendonitis and De Quervain's. He recommended a wrist splint, anti-inflammatories, stretching exercises and ice packs. When Dr. Quinn saw claimant on October 26, 2000, she still had complaints of pain, numbness and tingling in both hands and pain in both forearms. He again treated her with steroid injections. On November 20, 2000, claimant's symptoms were unchanged. On December 28, 2000, Dr.

Quinn made a note that claimant's left upper extremity impairment would probably be seven percent, but at his deposition his opinion was a two percent impairment to the left upper extremity. The record also suggests that he was following instructions from the insurance carrier as to whether he was to rate both or only the left upper extremity. Nevertheless, he said he did not rate the right upper extremity due to the lack of objective findings. Moreover, Dr. Quinn would not relate the right upper extremity symptoms to claimant's work.

Lowry Jones, Jr., M.D., is a board certified orthopedic surgeon. He first examined claimant on May 11, 2000, as a referral from a physician at Altrutech. He treated only her right knee. Physical examination revealed swelling, effusion, tenderness and difficulty with extension. Her X-rays appeared normal but Dr. Jones said cartilage injuries do not show up on x-rays. He recommended arthroscopic surgery which was performed on May 19, 2000. Following surgery claimant was on crutches for a little more than three weeks and was given physical therapy. When he last examined claimant on August 31, 2000, there was no fluid on her knee and she had full range of motion but still had pain with compression of her kneecap. She was able to squat but could not lift anything from that position. He recommended permanent restrictions of no repetitive lifting below the knee level, with a single lift weight limit below the knee of 30 pounds and no lifting above 70 pounds if she picked up from above the knee level. No squatting to lift. He rated claimant at ten percent permanent impairment of function to the leg. His post operative diagnosis was chondromalacia with chondral lesions of the patella and the tibial plateau. Dr. Jones said that he would be surprised if claimant had locking of her knee, but complaints of swelling and catching would not be unusual. Also, difficulty with walking or prolonged standing would be consistent with her type of injury.

In February 2001 claimant found other employment with Casey's Convenience Store as a cashier. P. Brent Koprivica, M.D., examined claimant on March 10, 2001 at her attorney's request. Dr. Koprivica is board certified in emergency medicine and occupational medicine. Dr. Koprivica examined the medical records from Dr. Jones, Dr. Quinn, and Altrutech as well as the EMG and nerve conduction velocity studies performed on the left upper extremity by Dr. Ryan on March 31, 2000. He diagnosed bilateral De Quervain's syndrome, bilateral carpal tunnel syndrome and flexor tendonitis. Finkelstein's testing was positive bilaterally for De Quervain's syndrome. Tinel, Phalen's and reverse Phalen's testing were positive bilaterally for carpal tunnel syndrome. Provocative testing for radial tunnel syndrome was negative bilaterally as was testing for cubital tunnel syndrome. Range of motion of the right knee was limited as compared to the left but without instability. She had extreme subjective pain in the medial compartment with McMurray's maneuver but no locking. Her pinch strength was below normal in both hands. On the lower extremity she had significant arthralgia with grind testing and favored the right knee with squatting due to pain.

Dr. Koprivica recommended repeat electro-diagnostic studies of both upper extremities and said that if the results were abnormal, consideration should be given to open carpal tunnel release including radial flexor tenosynovectomy. He assigned a 20 percent impairment to the left upper extremity and a 15 percent impairment to the right upper extremity. These convert to a 12 percent and a nine percent whole person impairment respectively which, when combined, results an overall 20 percent whole person impairment attributable to the August 5, 1999 accident. He would advise claimant to avoid repetitive pinching, repetitive grasping, repetitive wrist flexion/extension, repetitive ulnar deviation of the wrist and limit her physical demand to the light/medium category with a maximum lift or carrying of 30 pounds. He also recommend she avoid exposure of the upper extremities to vibration.

With respect to the left upper extremity injury, Dr. Koprivica said that it is not uncommon for somebody to overuse one hand when the other hand has been injured. Based upon her history and complaints, this is what Dr. Koprivica believed occurred with claimant. Therefore, he initially related her ongoing bilateral hand pain and numbness with pain going into the arm and shoulder on the left and to the level of the elbow on the right to claimant's work injury. But after Dr. Koprivica was advised of the date claimant last worked for respondent and of the date she began working for the subsequent employer, Casey's, he equivocated on his causation opinion concerning the right upper extremity.

With regard to the February 14, 2000, injury to the right knee, he considered claimant to be a maximum medical improvement but with an increased risk of post traumatic degenerative osteoarthritis. He recommended claimant avoid repetitive squatting, crawling, kneeling, or climbing, but these could be performed on a occasional basis. He agreed with Dr. Jones limiting her to 30 pounds for lifting from floor level. Dr. Koprivica rated her impairment at 20 percent to the right lower extremity.

Claimant testified that respondent terminated her benefits in February 2000, but did not give a specific date. In computing claimant's average weekly wage, the Board will use the last day claimant worked for respondent as the last date those benefits were provided by respondent.

Award

WHEREFORE, the Appeals Board affirms Administrative Law Judge Robert H. Foerschler's February 11, 2002, Award as to the percentages of permanent partial disability in both docketed claims, but will use 200 weeks per the scheduled injury statute in Docket Number 253,399, and the average weekly wage and compensation rates are modified to include the cost of the fringe benefits as of February 14, 2000, the last date claimant worked for the respondent, as follows:

For the August 5, 1999 injury to the left forearm in Docket Number 253,398, claimant is entitled to 200 weeks on the schedule minus 21 weeks of temporary total disability compensation equals 179 x 20 percent disability equals 35.8 as the number of compensable weeks.

The claimant is entitled to 21 weeks of temporary total disability compensation at the rate of \$159.66 per week or \$3,352.86, followed by 6.43 weeks of permanent partial disability compensation at \$159.66 or \$1,026.61, followed by 29.43 weeks, at the rate of \$188.84 per week, in the amount of \$5,557.56 for a 20 percent loss of use of the left forearm, making a total award of \$9,937.03.

For the February 14, 2000 injury to the right leg in Docket Number 253, 399, claimant is entitled to 200 weeks on the schedule minus 12 weeks of temporary total disability compensation equals 188 x 10 percent disability equals 18.8 as the number of compensable weeks.

Claimant is entitled to 12 weeks of temporary total disability compensation at the rate of \$192.94 per week or \$2,315.28, followed by 18.8 weeks of permanent partial disability compensation, at the rate of \$192.94 per week, in the amount of \$3,627.27 for a 10 percent loss of use of the right leg, making a total award of \$5,942.55.

As of April 18, 2003, all amounts are due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of April 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
Stephanie Warmund, Attorney for Respondent and Insurance Carrier
Robert H. Foerscher, Administrative Law Judge
Director, Workers Compensation Director